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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re LUISA Z., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. LUISA Z., Defendant and Appellant.	F033011 (Super. Ct. No. 86431-4) **O P I N I O N**

APPEAL from a judgment of the Superior Court of Fresno County, Timothy Kams, Judge.

Francine R. Adkins Tone, under appointment by the Court of Appeal, for Defendant and Appellant.

*Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of Statement of the Case and Facts and part I.

Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, Robert R. Anderson, Assistant Attorney General, Margaret Venturi and Charles Fennessey, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Appellant Luisa Z. was arrested for possession of marijuana for sale. The juvenile court initially placed her on informal probation, but appellant violated probation, and the juvenile court committed her to the California Youth Authority (CYA). The court also ordered her to register as a narcotics offender, pursuant to Health and Safety Code section 11590, subdivision (a), upon her "release" from CYA.

In the nonpublished portion of this opinion, we will conclude the juvenile court did not abuse its discretion in committing appellant to CYA. In the published portion we will find the juvenile court lacked statutory authority to order a juvenile to register as a narcotics offender.

STATEMENT OF THE CASE AND FACTS*

Appellant Luisa Z. (born Nov. 20, 1981) is one of eight children. When she was six months old, she and her twin brother were kidnapped by their father. The father left appellant and her brother in New York City, and the children were taken into custody by Child Protective Services. The children were placed with foster parents, who began adoption procedures. Appellant's mother found the children when they were two and one-half years old, in the midst of the foster parents' adoption proceedings. Appellant and her brother were returned to California, and thereafter lived with their natural mother, stepfather, and siblings in Selma.

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*See footnote on page 1, *ante*.

When appellant was seven years old, she was treated by a school psychologist because she liked to play with knives and had visions of ghosts. She later attended continuation school, but was defiant toward staff and ditched class. Appellant's mother reported her as a runaway on at least 10 different occasions. There were many times when appellant left home without permission and failed to return until the following day.

On December 25, 1995, appellant left her mother's residence and never returned, and the mother reported her as a runaway. Appellant made no effort to contact her family, and her mother was unaware of her whereabouts. While she was a runaway, appellant spent the time partying with friends and using drugs on a daily basis.

On May 21, 1996, officers of the Fresno County Narcotics Enforcement Team served a search warrant at an apartment in Selma. The officers announced their presence and contacted three Hispanic females in the front room. As the officers approached the bedroom, the door was slammed shut and blocked. The officers forced open the door, and located appellant Luisa Z. and an adult male suspect in the bedroom. Appellant had five bags of marijuana in her pocket, weighing approximately 12.5 grams, which were individually wrapped in separate packages for purposes of sale. There were two small scales in the bedroom closet. The adult male arrested with appellant was her 35-year-old boyfriend.

On May 23, 1996, a petition was filed in Fresno County Superior Court, sitting as a juvenile court, seeking to have appellant declared a ward pursuant to Welfare and Institutions Code section 602. The petition alleged appellant possessed marijuana for purposes of sale in violation of Health and Safety Code section 11359.

On June 14, 1996, appellant admitted the allegations of the petition. The court found unusual circumstances based on appellant's age, lack of prior substantial criminal history, and the interests of justice. The court placed appellant on informal probation with the specific terms and conditions not to use or possess narcotics or controlled substances; to obey the directives of her mother, "which means you can't run away" and

included curfew and not to associate with her 35-year old boyfriend. The court advised appellant the matter would be dismissed if she abided by the terms of probation for six months. The court further advised appellant that if she failed to comply, the matter would be returned for a formal sentencing hearing that could result in her commitment to CYA for up to three years. Appellant promised to obey the probation conditions, and understood what would happen if she violated probation. Appellant also signed a contract as to the terms and conditions of informal probation, and was released to her mother's custody. Thereafter, appellant lived in Selma with her mother and her siblings.

In July 1996, appellant threatened to kill her brother by cutting him up with a knife and placing his body parts in the refrigerator. After she made such threats, she laughed and claimed to be kidding. However, appellant's mother reported that appellant made such threats when she was angry, and there had been occasions when the mother feared appellant would actually harm her brothers.

On September 13, 1996, appellant's mother contacted the probation officer and reported appellant continued to be out of control and failed to return home until 5:30 a.m.

On September 30, 1996, a petition was filed to reinstate the matter on calendar, given appellant's noncompliance with the terms of her informal probation.

On October 11, 1996, the court found appellant was out of control and had not complied with the terms of probation, and reinstated the petition on the original charge of felony possession of marijuana for sale. Appellant was remanded into custody and placed in the Ashjian Treatment Center, and a disposition hearing was scheduled.

On October 25, 1996, the disposition hearing was held. According to the probation officer's report, appellant stated she ran away from home in December 1995 because she did not think anyone cared about her. She associated with friends who used crank, and she used crank, cocaine, and marijuana cigarettes laced with cocaine. Appellant stated she did not "snitch" on her friends when she was arrested, and she took the blame for them. Appellant admitted making the threats to her siblings. Appellant

expressed remorse and was willing to participate in counseling and get along better with her family. Appellant attended continuation school and the faculty had noticed a dramatic change in her behavior. She regularly reported for her weekly office visits and met with the school psychologist regarding anger management and family issues. However, appellant stated that she attempted suicide three months earlier by ingesting pills, but later realized she had just taken vitamins.

Appellant had done "exceptionally well" at the Ashjian Treatment Center since she had been remanded into custody. Appellant's mother wanted her to return home, but also realized she needed help.

At the disposition hearing, appellant stated she wanted to go home and promised to be more responsible. Appellant's mother stated she wanted appellant to come home, but also to change her behavior. The court found the section 11359 violation to be a felony with a maximum period of confinement of three years. The court adjudged appellant a ward of the court, and committed her to the Ashjian Treatment Center for 30 days, but stayed the commitment and ordered appellant to the New Directions Program for a period not to exceed 93 days. The court ordered appellant to attend psychological treatment and counseling as directed, and complete a substance abuse treatment program. The court further directed the probation officer to consider a furlough to the mother upon completion of the program. The court advised appellant to follow the rules of the juvenile facility to successfully complete the terms and condition of probation.

> "How well you do in custody in the ninety-three day program . . . how well you do there will also play a big part in the Court's consideration as to whether you are a worthy candidate of being furloughed home to your mother at the end of that commitment rather than going right to a placement facility."

Appellant acknowledged the court's advice and the possibility she could go home if she did well in the program.

On December 18, 1996, the probation officer reported appellant had done poorly in the New Directions Program. She displayed out-of-control behavior upon entering juvenile hall by tearing the sheets, throwing toilet paper, yelling and banging in her room. She had continually been placed in a holding room for acting aggressively toward staff, and she attempted suicide on several occasions. She was evaluated by mental health authorities, who reported she had a severe anger management problem. The school psychologist determined appellant was emotionally disturbed and needed to be placed in a program to deal with her needs.

On December 23, 1996, a noncompliance review hearing was held. The court found that appellant's furlough to her mother would be inappropriate under the circumstances. The court ordered appellant to remain detained pending a suitable placement.

On January 23, 1997, appellant was placed in Walden House Group Home in San Francisco to address her psychological needs. On February 8, 1997, however, appellant ran away from the group home. On February 10, 1997, she was arrested, and transported back to Fresno County.

On February 11, 1997, a petition was filed to place the matter on calendar because appellant failed to remain at the group home, and violated the court's placement conditions and previous orders. Appellant was detained in Ashjian Treatment Center.

On February 18, 1997, the court found appellant violated the previous placement conditions. The court ordered appellant to remain in Ashjian Treatment Center pending the screening process for a suitable placement.

On March 4, 1997, appellant was placed at Kings View Residential Center.

On April 25, 1997, a periodic review hearing was held. According to the probation officer's report, appellant made several attempts to run away from Kings View during her first month in the program, but she returned on her own. She demonstrated hostile and manic behavior, but also acted charming, appealing, and manipulative.

Appellant attended therapy sessions and had problems with anger. She also had a history of depression and self-mutilation, and had been diagnosed with bipolar affective disorder. She was on medication and cooperating with the therapist. The court found appellant's current placement appropriate and she was continued as a ward of the court.

On May 21, 1997, appellant ran away from Kings View. On May 22, she turned herself in to the Selma Police Department.

On May 27, 1997, a petition was filed to reinstate the matter on calendar given appellant's violation of the court's placement order. However, the Kings View staff felt appellant was still amenable to treatment and was willing to reinstate her if there was space available in the program. On May 28, the court released appellant to a representative of Kings View. There was no space at the facility, however, and the probation officer found a more expeditious placement at the Genesis Group Home.

On July 2, 1997, appellant was placed at the Genesis Group Home. Appellant did "remarkably well" until she ran away from the group home on August 2, 1997. She was arrested the same day by the Fresno Police Department.

On August 19, 1997, the court found appellant in noncompliance with its prior orders. Appellant was detained pending a suitable placement.

On August 25, 1997, appellant was again placed at Kings View Residential Center.

On August 24, 1997, the court held a periodic review hearing. According to the probation officer's report, appellant had a "horrendous history" of acting out, swearing, verbally abusing staff and displaying bizarre behavior. She could also be very lovable and good natured. Appellant's three prior placements were classified as complete failures. Appellant did fairly well but suffered from steep drops in her attitude, which culminated in running away. Appellant's lack of self-control was described as "truly amazing, and her volatile outbursts were frequent and intense." It was further observed that between appellant's depressed and manic states, she genuinely wished to participate

in a group home program, and she remained depressed and frustrated because of her behavioral problems. Appellant stated she could sense the mood swings and felt her own behavior was uncontrollable. Since her latest placement, she had five serious incident reports for noncompliant and obnoxious behavior, but she was remorseful and had not been involved in any serious incidents. Appellant was cooperative in therapy and wanted to stay at Kings View. However, she lacked consistency and discipline and her emotional issues continued to sabotage her program.

The probation report further stated that appellant's mother was frightened of her and unable to deal with her unbelievable mood swings and unpleasant behavior. The report concluded that appellant was perhaps a "'diamond in the rough,'" and could be placed in a more appropriate setting with proper discipline, structure, guidance, and caring. The court continued appellant's placement at Kings View.

On February 13, 1998, appellant was terminated from the Kings View program following numerous incidents of erratic, histrionic and violent behavior, which culminated in the destruction of a television set. She was transported to Fresno County Juvenile Hall. The Kings View staff reported she had been heavily medicated but suffered severe biological, biochemical, and psychosocial stress, and recommended that she would benefit from a more highly structured placement such as a six-bed Level 14 facility.

On February 18, 1998, the court ordered appellant to remain detained but placed her on a mental health watch while being evaluated for a Level 14 facility. Appellant was subsequently certified for a Level 14 Group Home. The Milhous Group Home rejected appellant because of the lack of space, but appellant was being screened by the Cinnamon Hills Home. Appellant's mother requested a home furlough because she wanted appellant to have another chance in the house.

On March 27, 1998, appellant was furloughed to her mother's custody. On April 30, the mother reported appellant was doing well.

On May 1, 1998, a periodic review hearing was scheduled to be held. Appellant's mother appeared and explained appellant was in the hospital. The mother stated that appellant had been doing well at home and school. That morning, however, appellant and her mother had problems finding someone to drive them to court. Appellant became extremely upset and afraid that she would be found in violation of probation if she failed to appear in court. Appellant's mother left her alone for one and one-half hours. When she returned, she discovered appellant had taken 25 Benedryl pills and was nearly comatose. Appellant was taken by ambulance to University Medical Center and was hospitalized for several days. The probation officer subsequently reported appellant's suicide attempt was triggered by impulsiveness rather than depression, and recommended appellant remain with her mother. Appellant and her mother had a secure relationship, and they agreed to participate in mental health counseling.

On May 8, 1998, the periodic review hearing was held. Appellant was present and stated she had been to a job interview which had gone well. Appellant stated she was doing better, and school was also going well. The court noted appellant was making good progress, and that she could get off probation if she kept up the good work. The court set the matter for a further review hearing and advised appellant to call the probation office if she had future transportation problems.

On June 8, 1998, another periodic review hearing was held. The court reviewed the probation report, which indicated appellant's home furlough was marginally more successful than her previous placements and she was obeying her mother's directives. The court noted appellant would turn 18 years old in November 1999, and vacated the placement order and directed appellant to remain on probation until her 18th birthday. The court directed appellant to remain under her mother's care, custody, and control, including directions as to her associates and curfew. Appellant promised to continue attending school and obey her mother. The court encouraged appellant to keep up the good work.

On September 22, 1998, appellant ran away from her mother's home. On October 2, 1998, appellant's mother filed a missing person report because appellant failed to return home.

On October 14, 1998, a supplemental juvenile petition was filed against appellant, pursuant to Welfare and Institutions Code section 777, alleging that she violated probation by running away from home.

On October 15, 1998, the court issued an arrest warrant for appellant based on her violation of probation.

On February 25, 1999, appellant was arrested on the warrant and booked at Fresno County Juvenile Hall. Appellant was six months pregnant, with a due date of May 27, 1999.

On February 26, 1999, the detention hearing was held, and appellant admitted the allegations of the petition in that she had run away from her mother's home. The court found appellant had not complied with its previous orders, and ordered appellant to remain detained pending the disposition hearing. The People noted appellant had run away from four previous placements, and the matter involved a potential CYA commitment. The court acknowledged the circumstances and ordered appellant to write a three to five page essay on why character counts.

On March 12, 1999, the disposition hearing was scheduled. The court reviewed appellant's essay and continued the hearing for further reports.

On March 17, 1999, the disposition hearing was held, and the court reviewed the probation report. According to the report, appellant's mother stated appellant had been gone from home since August 1998. The mother did not know about appellant's pregnancy until she was arrested. Appellant stated that after she left home, she consumed one to two cans of beer every Saturday with friends, used marijuana every three weeks, and methamphetamine once a month. Appellant claimed she stopped using drugs when she became pregnant. Appellant visualized her future working in fast food, with her

mother and sister caring for her baby. Appellant promised to learn to be a good mother and stay in one place. Appellant requested to be released to her mother's custody.

The report summarized appellant's previous placements, and that she had received special attention at each facility because of her behavior and psychological problems, including counseling, treatment, and medication. Despite such treatment, she displayed out-of-control and combative behavior, and the staff was frequently required to physically subdue her.

The report stated the court's sentencing options were limited by appellant's age, her pregnancy, and her failure to remain at the four previous placements. The placement unit denied appellant services based on her prior placement failures and the need for a secure facility. Appellant was not eligible for a boot camp program based on her pregnancy and age. An intake officer at CYA indicated the facility accepted pregnant minors if they were not in their third trimester, but the case must be medically screened and cleared.

The report concluded appellant had serious psychological problems and was totally incapable of being a responsible mother.

> "In addition, because [appellant] has never remained at any non-secured placement, there is no reason to believe she will do so now. [Appellant's] mother expressed concern in regards to [appellant] having care of a newborn baby. She feels that [appellant], temperamentally is not able to handle that stress and she has persistently run away when she could not deal with her problems."

Appellant's mother and adult sister were prepared to accept custody of appellant's baby when it arrived.

The report recommended appellant be committed to CYA.

> "However, due to the stage of [appellant's] pregnancy, it appears that [CYA] would probably not accept her immediately. Therefore, it is recommended that the commitment be stayed until [appellant] delivers her baby. In the meantime, for the sake of [appellant] and her unborn baby, it is recommended that [appellant] remain detained at Juvenile Hall until such time that she delivers her baby. After delivering her baby, it is

> recommended that [appellant] be transported to [CYA]. Your officer makes this recommendation in the hopes that within the confines of [CYA] and with the help of their staff [appellant] might receive the services she needed in a secure setting."

At the disposition hearing, appellant requested one more opportunity at a placement situation because she had learned her lesson and she would stay wherever the court sent her. "She understands she's made some mistakes. However, she's ready to start new." Appellant promised to become a better person and put more effort into it. The prosecutor regretted that appellant faced a CYA commitment and acknowledged she needed help, but noted the court had given her numerous opportunities and she repeatedly ran away. The prosecutor believed appellant would not receive the necessary treatment unless she was actually in custody. The prosecutor also noted there were local resources for minor males, but there were not the same opportunities for minor females in the community. In contrast, CYA could offer appellant education and treatment that were not available at the local level.

The court found appellant had been placed on probation but failed to comply. The court also found it had considered all local and less restrictive forms of custody, and was fully satisfied they were inappropriate dispositions. The court further found reasonable efforts had been made to prevent or eliminate the need for restrictive placement, and to return appellant to her home. The court found appellant's mental and physical conditions were such as to render it probable she would benefit by the reformatory, education, disciplinary or other treatment provided by CYA. The court further found appellant was an individual with exceptional needs and would likely benefit from the secure programs available. The court committed appellant to CYA for a maximum of three years, and granted her the appropriate custody credits. The court also ordered appellant to register with local law enforcement authorities pursuant to Health and Safety Code section 11590, subdivision (a).

On March 19, 1999, appellant filed a timely notice of appeal of the court's disposition order committing her to CYA.

On appeal, appellant contends the court abused its discretion in committing her to CYA, and asserts it should have reconsidered a Level 14 facility as a less restrictive placement. Appellant also asserts the court improperly ordered her to register as a drug addict because such a circumstance was not a condition of appellant's original admission of the felony charge of possession for sale.

DISCUSSION

I.*

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN COMMITTING APPELLANT TO CYA

Appellant contends the trial court abused its discretion in committing her to CYA and failing to consider less restrictive placements. Appellant contends that given her limited history of delinquency, she was not an appropriate candidate for CYA and the court should have reconsidered a Level 14 placement based on her severe emotional and psychological problems.

The juvenile court's decision to commit a minor to CYA will be reversed only when an abuse of discretion has been shown. (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395; *In re George M.* (1993) 14 Cal.App.4th 376, 379.) An appellate court will not lightly substitute its decision for that rendered by the juvenile court. We must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when supported by substantial evidence. (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473; *In re Lorenza M.* (1989) 212 Cal.App.3d 49, 53; *In re Michael D., supra*, 188 Cal.App.3d at p. 1395.) The evidence, however, must demonstrate probable benefit to the minor from commitment to CYA and that less restrictive alternatives would be ineffective or inappropriate. (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576; *In re*

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*See footnote on page 1, *ante*.

George M., supra, 14 Cal.App.4th at p. 379.) In determining whether there is substantial evidence to support the commitment, we must examine the record presented at the disposition hearing in light of the purpose of the juvenile court law. (*In re Lorenza M., supra,* 212 Cal.App.3d at p. 53.)

There is no absolute rule barring CYA commitment except as a last resort. *(In re Tyrone O.* (1989) 209 Cal.App.3d 145, 151.) Appellant relies on *In re Aline D*. (1975) 14 Cal.3d 557 for the contention that her commitment to CYA was inappropriate in light of the purposes of the juvenile court law. However, *Aline D*. predated the amendments regarding the purpose of the juvenile court law. (*In re Lorenza M., supra,* 212 Cal.App.3d at p. 57.) The 1984 amendments to the juvenile court law reflected an increased emphasis on punishment as a tool of rehabilitation, and a concern for the safety of the public. (*In re Asean D., supra,* 14 Cal.App.4th at p. 473; *In re Michael D., supra,* 188 Cal.App.3d at p. 1396.) "Thus, it is clear that the Legislature intended to place greater emphasis on punishment for rehabilitative purposes and on a restrictive commitment as a means of protecting the public safety. This interpretation by no means loses sight of the 'rehabilitative objectives' of the Juvenile Court Law. [Citation.] Because commitment to CYA cannot be based solely on retribution grounds [citation], there must continue to be evidence demonstrating (1) probable benefit to the minor and (2) that less restrictive alternatives are ineffective or inappropriate. However, these must be taken together with the Legislature's purposes in amending the Juvenile Court Law . . . ." (*In re Michael D., supra,* 188 Cal.App.3d at p. 1396; In re *Teofilio A., supra,* 210 Cal.App.3d at p. 576.) "Thus, while there has been a slight shift in emphasis, rehabilitation continues to be an important objective of the juvenile court law. To support a CYA commitment, it is required that there be evidence in the record demonstrating probable benefit to the minor, and evidence supporting a determination that less restrictive alternatives are ineffective or inappropriate." (*In re Teofilio A., supra,* 210 Cal.App.3d at p. 576.) However, "[c]ircumstances in a particular case may well

suggest the desirability of a [C]YA commitment despite the availability of . . . alternative dispositions . . . . [Citations.]" (*In re Martin L.* (1986) 187 Cal.App.3d 534, 544; *In re Tyrone O., supra*, 209 Cal.App.3d at p. 151.)

Welfare and Institutions Code section 202, "as amplified in section 734 . . . mandate '. . . care, treatment and guidance . . . which holds [the minor] accountable for [his] [her] behavior, and which is appropriate for [his] [her] circumstances,' including 'punishment that is consistent with . . . rehabilitative objectives' (§ 202, subd. (b)), and authorize CYA commitment where the judge is 'fully satisfied' that the minor's condition and circumstances 'render it probable that he [she] will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority' (§ 734)." (*In re Tyrone O., supra*, 209 Cal.App.3d at p. 151, fn. omitted.)

"While it is true that the circumstances and gravity of the minor's offense are always considerations in determining [his] [her] proper disposition, these factors are not dispositive. [Citation.] The juvenile court must also consider the minor's age and previous delinquent history, in addition to other relevant and material evidence. [Citation.] Also, because courts have expressed a persistent concern for committing young, unsophisticated youths with individuals who are experienced, sophisticated, criminally oriented types, alternative placement options should be adequately explored. [Citation.] CYA commitment made with some punitive purpose is proper where consistent with the rehabilitative purposes of the Juvenile Court Law and not retributive. [Citation.]" (*In re Tyrone O., supra*, 209 Cal.App.3d at p. 152.)

In the instant case, the trial court gave appellant every chance to succeed at less restrictive placements. The court initially placed her on informal probation at home with the expectation of dismissing the matter upon her successful completion of the terms and conditions. Within weeks, however, appellant was out of control and threatening to murder her siblings. The court placed appellant in various group homes in an attempt to deal with her emotional and psychological problems, but she failed to cooperate with the

staff, ran away from the facilities, and abused narcotics during her disappearances. Each time appellant reappeared before the court, she repeatedly begged to return home and promised to improve her behavior. The court finally granted appellant's request and returned her to her mother's custody. Appellant again ran away from home, and was missing for six months. When she was taken into custody, she was six months pregnant and reported that she had again abused drugs during her runaway period. Both the probation officer and the court were concerned with appellant's inability to remain at any of the placement facilities or even at her home, and believed she needed to be placed in a secure facility to obtain the discipline and treatment that she needed and prevent the recurrence of her drug use. Thus, the court had used all of the less restrictive placements in an effort to rehabilitate appellant.

Appellant argues the trial court should have reconsidered the Level 14 placement, and notes that appellant was actually accepted into such a facility but the court "inexplicably" rejected the Level 14 program and placed appellant with her mother. Appellant contends the court should have reconsidered the Level 14 placement as a less restrictive alternative to CYA, and such a program would have been more appropriate to address her emotional and psychological problems.

Group homes are classified from levels one through fourteen, based on the level of the care and services offered to juveniles. A Level 14 group home is the highest rate classification level. Such a facility is certified by the Department of Mental Health to provide mental health services for seriously emotionally disturbed juveniles who are either dependent or delinquent minors. (Welf. & Inst. Code, §§ 11462, 11462.01, 11467, 11468.6, 11469; Health & Saf. Code, §§ 1502.4, 4096, 4096.5.) Appellant was certified for a six-bed Level 14 facility, but there was no space available at the time. There is nothing in the record to indicate such a facility was a secure placement which would not have presented yet another opportunity for appellant to run away and return to her cycle of drug use. (See, e.g., Health & Saf. Code, §§ 4094, 4094.5.)

Appellant's argument regarding a potential placement in a Level 14 facility ignores the severe problems posed by her predilection for running away from home and every facility she was placed in. She repeatedly promised to abide by the terms and conditions of her placements and cooperate with the various programs, but she displayed hostile and histrionic behavior. She ran away from every group home, even when placed in a facility in San Francisco. The probation officer reported that appellant initially did well in treatment, but fell back into her behavior problems which led to her loss of control and disruptive behavior, culminating in running away and returning to her drug use. The trial court considered these reports and found that appellant had been unable to succeed in less restrictive environments, there were no other options, and she would benefit from the secured CYA facility. There is nothing in the record to indicate the Level 14 group home would have offered the same type of locked, secured facility which would have controlled appellant from running away, returning to the cycle of drug abuse, and endangering her life. The court was left with no other alternative but to commit appellant to CYA, and it did not abuse its discretion in placing her in a "more structured environment so that he [she] could develop more self-control" and receive the necessary treatment. (See *In re Ismael A.* (1989) 207 Cal.App.3d 911, 920.)

II.

REGISTRATION AS A DRUG OFFENDER

The trial court committed appellant to CYA for a period not to exceed three years based on her admission that she possessed marijuana for sale in violation of Health and Safety Code[1] section 11359, and her violation of probation. The court also ordered appellant to register as a narcotics offender pursuant to Health and Safety Code section

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1 All subsequent statutory references are to the Health and Safety Code.

11590, subdivision (a) upon her "release" from CYA. Appellant did not object to the imposition of the registration order.

Appellant asserts such a registration requirement can only be based on a criminal conviction rather than a juvenile adjudication, and the court lacked statutory authority to impose the registration requirement..

Respondent asserts appellant has waived any challenge to the court's failure to advise her of the registration order because she did not object at the disposition hearing. In the alternative, respondent asserts that even if appellant did not waive this objection, she cannot show prejudice because the trial court had the authority to require a juvenile to register as a narcotics offender.

In order to resolve these issues, we must first determine whether appellant's failure to object to the registration order waived review of this issue. Appellant asserts the court lacked the authority to impose such an order, and thus imposed an unauthorized sentence which may be challenged despite her failure to raise the issue below. Second, we must determine whether appellant, as an adjudicated juvenile committed to CYA, is a person within the narcotics registration statutes. Third, we must determine whether the court exceeded its authority in imposing such an order at the disposition hearing.

A. <u>The registration requirement</u>

Respondent is correct that any objection to the court's failure to advise the party of a registration requirement is waived if not raised when the registration order is formally imposed, absent a showing of prejudice. (*People* v. *McClellan* (1993) 6 Cal.4th 367, 378.) However, appellant asserts the registration order exceeded the court's statutory authority, and thus constituted an unauthorized sentence which may be challenged despite failing to raise the issue at the disposition hearing. If the court lacked statutory authority to order a person to register as a narcotics offender, then that aspect of the disposition order was unauthorized and appellant's failure to object does not constitute waiver of the contention on appeal. (See *People* v. *Brun* (1989) 212 Cal.App.3d 951, 954; *People* v.

Scott (1994) 9 Cal.4th 331, 354.) Thus, we must review the narcotics offender registration requirements to determine whether the court's order may be reviewed as exceeding its jurisdiction.

"Registration requirements generally are based on the assumption that persons convicted of certain offenses are more likely to repeat the crimes and that law enforcement's ability to prevent certain crimes and its ability to apprehend certain types of criminals will be improved if these repeat offenders' whereabouts are known. (3 Witkin & Epstein, Cal.Criminal Law (2d ed. 1989) § 1416, p. 1678.) Accordingly, the Legislature has determined that sex offenders (Pen. Code, § 290), narcotics offenders (Health & Saf. Code, § 11590) and arsonists (Pen. Code, § 457.1) are likely to repeat their offenses and therefore are subject to registration requirements." (*People* v. *Adams* (1990) 224 Cal.App.3d 705, 710.)

The trial court herein relied on section 11590, subdivision (a) which requires the registration as a narcotics offender by "any person who is convicted" of one of the enumerated narcotics offenses; "any person who is discharged or paroled from a penal institution where he or she was confined because of the commission of any such offense"; or any person who arrives in the state having an out-of-state conviction which would qualify as one of the enumerated narcotics offenses in California. While section 11590 creates a duty on any person within its terms to comply with the registration provisions, it does not give rise to a concomitant duty on the part of the trial court to order a convicted person to comply with such registration provisions. (*People* v. *Terrell* (1999) 69 Cal.App.4th 1246, 1258.) In addition, registration does not constitute "punishment" for purposes of ex post facto analysis. (*People* v. *Castellanos* (1999) 21 Cal.4th 785, 799

The section 11590, subdivision (a) registration requirement triggers associated statutory obligations, such as maintaining current registration and furnishing fingerprints and photographs to the Department of Justice. The registrant is subject to police inquiry in the event crimes similar to those for which he or she has registered has occurred.

Anyone who fails to comply with the registration requirement is guilty of a misdemeanor. (§ 11594; *People* v. *Villela* (1994) 25 Cal.App.4th 54, 60; *People* v. *Brun, supra,* 212 Cal.App.3d at p. 958.)

The purpose of section 11590's registration requirement is to deter recidivism by facilitating the apprehension of past offenders. (*People* v. *Villela, supra,* 25 Cal.App.4th at p. 60; *People* v. *Brun, supra*, 212 Cal.App.3d at p. 958.) It has survived constitutional scrutiny based on the rational legislative basis for collecting and maintaining information concerning the whereabouts of drug offenders convicted of certain more serious drug offenses, such as possessing marijuana for sale. Retaining such information is properly within the exercise of the state's right to enact laws promoting public health, welfare and safety, by permitting local police to keep track of the identities and locations of drug offenders in the community. (*People* v. *Hove* (1992) 7 Cal.App.4th 1003, 1006.) Moreover, the registration requirement is designed to minimize the intrusion into individual privacy. The information contained in the section 11590 registration shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer, and the registration requirement terminates in five years. (*People* v. *Hove*, *supra*, 7 Cal.App.4th at p. 1007, fn. 7; *People* v. *Terrell*, *supra*, 69 Cal.App.4th at p. 1258.) Finally, the registration requirement has been found reasonable in light of the offense and the danger to society. "Possessing marijuana for sale is analogous to cultivating marijuana in that it is the beginning of a process which ultimately places an illegal substance in the hands of a great number of consumers. [Citation.]" (*People* v. *Hove*, *supra*, 7 Cal.App.4th at p. 1007.) For example, *Hove* dealt with a defendant ordered to register based on his conviction for possessing six and one-half pounds of marijuana for sale. "Given the quantity of marijuana found, the offense and the offender present a significant danger to society." (*Ibid*.)

In section 11590, the Legislature has expressed an intent to differentiate between various drug-related offenses and to require registration only for designated narcotics violations. "Had the Legislature intended to require all drug offenders to register, it could have drafted the statute to accomplish that purpose. The sentencing court is therefore not free to impose registration under section 11590 for convictions of crimes not listed in the statute. If it were otherwise, every sentencing court could nullify the Legislature's decision to treat convictions for different crimes in a different manner." (*People* v. *Brun, supra,* 212 Cal.App.3d at p. 954.) The court cannot subject a party to these specific statutory obligations and disabilities where the Legislature, by its omission of defendant's crime from section 11590, has manifested an intent that registration is not required. (*People* v. *Brun, supra,* 212 Cal.App.3d at p. 958.)

Thus, the juvenile court may have exceeded its authority and imposed an unauthorized order if section 11590, subdivision (a) does not permit the imposition of a registration requirement on a juvenile adjudicated a ward of the court and committed to CYA. (See *People* v. *Villela, supra,* 25 Cal.App.4th at p. 58; *People* v. *Saunders* (1991) 232 Cal.App.3d 1592, 1598.) Appellant's failure to challenge the registration order does not waive the instant contention that the court's order exceeded its statutory authority.

B. <u>Section 11590, subdivision (a)</u>

We must next determine whether appellant is within the registration requirements of section 11590, subdivision (a), which provides in pertinent part:

> "Except as provided in subdivisions (c) and (d), any person who is *convicted* in the State of California of any offense defined in Section . . . 11359, . . . or any person who is *discharged or paroled from a penal institution where he or she was confined* because of the commission of any such offense, or any person who is *convicted in any other state* of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, shall within 30 days of his or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the

sheriff of the county if he or she resides in an unincorporated area." (Italics added.)

In the instant case, appellant admitted the allegations of the juvenile petition in that she possessed marijuana for the purpose of sale in violation of section 11359, which is a qualifying offense in the registration statute. However, her status presents a more difficult question as to whether the registration statute is triggered. Appellant's situation clearly does not involve an out-of-state offense. In addition, she is not within the mandates of section 11590 as a person "convicted" of a qualifying offense because "[u]nder the juvenile court law, a person adjudged a ward of the court has not been 'convicted' of anything." (*In re Bernardino S.* (1992) 4 Cal.App.4th 613, 618.) Thus, appellant's juvenile adjudication is not a conviction within the meaning of section 11590, subdivision (a).

Therefore, the court only had the authority to require appellant to register as a narcotics offender upon her "release" from CYA if she could be classified as "any person who is discharged or paroled from a penal institution where he or she was confined because of the commission" of the qualifying offense. (§ 11590, subd. (a).) Appellant was certainly "confined" in CYA because of her "commission" of the qualifying offense. In addition, an adjudicated juvenile committed to CYA may be released either through discharge or parole. (See, e.g., *In re Michael I.* (1998) 63 Cal.App.4th 462, 466.)

We must examine the entire statutory scheme to determine whether a minor released from CYA following a juvenile adjudication and commitment is within the meaning of section 11590.

C. <u>Appellant's juvenile commitment to CYA</u>

We begin with the question of whether a juvenile commitment to CYA for violating the qualifying narcotics offense qualifies as confinement in a "penal institution" to trigger the registration requirement. Respondent asserts such language includes a juvenile who is committed to CYA.

There are several statutes which use the phrase "penal institution" in the course of describing prisons under the direction and control of the Department of Corrections. For example, Code of Civil Procedure section 1446 provides for the distribution of unclaimed money or property belonging to any person who dies while confined in a state penal institution "subject to the jurisdiction of the Department of Corrections." Penal Code section 11150, entitled "**Release from penal institution; notice**," addresses the registration requirements for persons convicted of arson, and provides that prior to the release of a person convicted of arson from an institution "under the jurisdiction of the Department of Corrections," the Director of Corrections shall notify the appropriate parties about the individual's release.

Penal Code section 667.5, subdivision (b) provides for a sentencing enhancement "for each prior separate prison term served for any felony." A previous version of Penal Code section 667.5 was interpreted as excluding a prior CYA commitment as a prior prison term to support the enhancement. (See *People* v. *Redman* (1981) 125 Cal.App.3d 317, 323.) Thereafter, Penal Code section 667.5 was amended to include subdivision (j), which states that when a person subject to the custody, control and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of Youth Authority, "that incarceration shall be deemed to be a term served in state prison." The amended language has been interpreted such that a youthful offender sentenced to state prison but transferred to CYA pursuant to Welfare and Institutions Code section 1731.5, subdivision (c) has served a prior prison term because the juvenile is deemed to be committed to the Department of Corrections and remains subject to the jurisdiction of the Department of Corrections and the Board of Prison Terms. However, a youthful offender who is directly committed to CYA pursuant to Welfare and Institutions Code section 1731.5, subdivision (a) is not deemed to have served a prior prison term because the juvenile is not subject to the custody, control, or discipline of the Department of Corrections. (*People* v. *Seals* (1993) 14 Cal.App.4th 1379, 1384-1385.)

The phrase "penal institution" is used only once in statutes relating to juvenile adjudications and CYA. Welfare and Institutions Code section 1123 mandates the Director of the Youth Authority to provide education about AIDS and HIV to "all wards at each *penal institution* within the jurisdiction of the department, including camps, . . ." (Italics added.) This statute has not been interpreted, and there are no further references to a "penal institution" within the CYA provisions.

There is no existing precedent as to whether a juvenile adjudication and CYA commitment constitutes a confinement in "a penal institution" within the meaning of section 11590, subdivision (a).[2] There are some examples as to other institutions and facilities. For example, a county jail is a "penal institution." (*People* v. *Valenzuela* (1981) 116 Cal.App.3d 798, 807.) In addition, the California Rehabilitation Center is considered a "penal institution," based upon the statutory classification of such a facility as a prison under the jurisdiction of the Department of Corrections, the physical characteristics of such a center, and the dual purpose of narcotics commitments as not only treatment and rehabilitation but also the control and confinement of persons committed thereto. (*People* v. *Valenzuela, supra,* 116 Cal.App.3d at pp. 807-808.)

In contrast, a juvenile hall is not a penal institution: "The juvenile hall shall not be in or connected with, any jail or prison, and shall not be deemed to be nor be treated as a penal institution. It shall be conducted in all respects as nearly like a home as possible." (Welf. & Inst. Code, § 851; *People* v. *County of Santa Clara* (1996) 49 Cal.App.4th 1471, 1488; *In re Rochelle B.* (1996) 49 Cal.App.4th 1212, 1219; *People* v. *Rackley* (1995) 33 Cal.App.4th 1659, 1668.)

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[2] *In re Anthony R.* (1984) 154 Cal.App.3d 772 expressly declined to address the issue of whether CYA was a "penal institution" within the meaning of the offense of petty theft with a prior conviction served in a penal institution. (*Id*. at p. 778, fn. 4.)

Respondent argues that CYA should be considered a "penal institution" because the nature and purpose of the juvenile court law has changed since *In re Aline D.* (1975) 14 Cal.3d 557. "At the time the Supreme Court published *In re Aline D.*, the general purposes of the juvenile justice system, as contained in former section 502 of the Welfare and Institutions Code, were to "'"secure for each minor . . . such care and guidance, preferably in his own home, as will serve the . . . welfare of the minor and the best interests of the State; . . . and when the minor is removed from his own family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents."' [Citation.] Juvenile commitment proceedings were designed for the purposes of rehabilitation and treatment, not punishment. [Citation.]" (*In re Lorenza M., supra*, 212 Cal.App.3d at p. 54.)

However, *Aline D.* predated the amendment of former Welfare and Institutions Code section 502 (now § 202) regarding the purposes of the Juvenile Court law. Section 202 now recognizes punishment as a rehabilitative tool and emphasizes the protection and safety of the public. (*In re Lorenza M., supra*, 212 Cal.App.3d at p. 57.) In evaluating the court's exercise of discretion in committing a minor to CYA, we now do so with punishment, public safety, and protection in mind. (*Id*. at p. 58.) A juvenile commitment to CYA could be characterized as confinement in a "penal institution" based on the state's recognition of punishment and public safety as the purpose of the juvenile court law.

The amendments to the juvenile court law reflected an increased emphasis on punishment as a tool of rehabilitation. (*In re Asean D., supra*, 14 Cal.App.4th at p. 473; *In re Michael D., supra*, 188 Cal.App.3d at p. 1396.) But there is still a significant difference between incarceration in prison and incarceration at a Youth Authority facility, "both in terms of conditions of restraint and in length of confinement." (*People* v. *Rocha* (1982) 135 Cal.App.3d 590, 596.) Incarceration in prison satisfies the primary purpose of punishing criminal behavior. (*Ibid*.) "The mission of the Authority, on the other hand,

is not retribution but to protect society by rehabilitation." (*Ibid*.; see also *In re Myresheia W.* (1998) 61 Cal.App.4th 734, 740-741; *Mardesich* v. *California Youthful Offender Parole Board* (1999) 69 Cal.App.4th 1361, 1367.)

A determination as to whether CYA is a penal institution, however, does not resolve the question as to whether a juvenile may be required to register as a narcotics offender. Instead, a review of the statutory scheme behind the registration requirement reveals that it completely excludes juveniles from its provisions.

D. <u>The statutory scheme</u>

The entirety of the statutory registration provisions reflects the exclusion of juveniles from the narcotics registration requirement. The narcotics registration statutes are contained in Division 10 of the Health and Safety Code constitutes the Uniform Controlled Substances Act. Within that division, chapter 10 addresses the control of users of controlled substances. Article 4, entitled "Registration of Controlled Substance Offenders," consists of sections 11590 through 11594 as to the registration of narcotics offenders. As discussed above, section 11590, subdivision (a) provides the statutory authority for the court to order a narcotics offender to register with the statute.

A review of the remaining statutes in article 4's registration scheme is instructive. Section 11592 provides that any person who is "discharged or paroled from a jail, prison, *school, road camp, or other institution where he [or she] was confined*" because of the commission of one of the enumerated narcotics offenses, "shall, prior to such discharge, parole, or release," be informed of his or her duty to register pursuant to section 11590 "by the official in charge of the place of confinement," who shall require the person to complete the forms mandated by the Department of Justice. (Italics added.) This section does not refer to a conviction, but only to the person's "commission or attempt to commit" one of the enumerated narcotics offenses. In addition, the reference to a school or "other institution where he [or she] was confined" could be interpreted as including

CYA, in which appellant was "confined" after admitting her commission of the narcotics offense.

Section 11593 provides that any person who "is convicted" of one of the enumerated offenses "and who is released on probation or discharged upon payment of a fine," shall be informed of the registration requirement "by the court in which he has been convicted." This section is obviously inapplicable to an adjudicated juvenile who has not been "convicted" of anything.

Finally, section 11594 sets forth the requirements for the "registration required by Section 11590 . . . ." The person must register with the Department of Justice, provide fingerprints and a photograph, and keep the department advised of his or her residence. In addition, section 11594 sets forth the five-year limitation of the registration period, as follows:

> "All registration requirements set forth in this article shall terminate five years after the discharge *from prison*, release *from jail* or termination of probation or parole *of the person convicted*." (Italics added.)

This section sets forth the five-year limitation for all narcotics registrations ordered pursuant to article 4, including the provisions of section 11590, subdivision (a). By its own terms, the limitations period cannot be applicable to a minor discharged or paroled from CYA following a juvenile adjudication and commitment. As discussed above, an adjudicated minor has not been "convicted" of anything--he or she cannot be considered as a convicted person whose probation or parole has been terminated. In addition, a minor discharged or paroled from CYA has not been "discharge[d] from prison" or "release[d] from jail."

A review of the statutory scheme of the registration requirement strongly suggests it does not apply to an individual such as appellant, who was adjudicated a ward of the court as a juvenile and committed to CYA. Even if CYA were to be considered a "penal institution" within the meaning of section 11590, any inclusion of an adjudicated juvenile within the registration requirement would leave the juvenile forever in limbo, given the

absence of any benchmark by which to calculate the running of the five-year registration period as defined in section11594. Such an interpretation would permit the court to order the adjudicated juvenile to register as a narcotics offender upon discharge or parole from CYA but leave the juvenile forever registered, in direct contradiction of the statutory mandate, given the impossibility of applying any benchmark period to the juvenile's legal status.

We are thus left with some confusion as to the meaning of section 11590's delineation of the persons within the registration requirement. The inclusion of any person "convicted" of the enumerated narcotics offenses obviously includes all adult offenders, regardless of where such an individual is confined, in the absence of any contrary statutory provisions.[3] Why, then, does section 11590, subdivision (a) provide an alternative classification based not on the person's "conviction" but on a person's discharge or parole from "a penal institution," and why does section 11592 include a person who has been confined in a "school" or "other institution"?

The answer may be suggested by a review of the former version of Penal Code section 290, an analogous registration statute which deals with sexual offenders. (See *People* v. *Hove*, *supra*, 7 Cal.App.4th at p. 1006.) Prior to 1986, Penal Code section 290, subdivision (a) required registration only by persons who had been "convicted" of specified sex offenses, which clearly did not apply to juveniles adjudged wards of the court. (*In re Bernardino S.*, *supra*, 4 Cal.App.4th at p. 618.) However, language in former subdivision (b) suggested such wards might be within the registration provisions:

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3 We note that Welfare and Institutions Code sections 3054 expressly exempts a person committed to CRC from article 4's registration requirement, even though such a person may have been convicted of a qualifying narcotics offense and CRC is considered to be a "penal institution." (*People* v. *Valenzuela*, *supra*, 116 Cal.App.3d at pp. 807-808.)

> "'(b) Any person who . . . is discharged or paroled from a jail, prison, school, road camp, *or other institution* where he or she was confined because of the commission or attempt to commit one of the above-mentioned offenses . . . shall, prior to discharge, parole, or release, be informed of his duty to register under this section . . .'" (4 Cal.App.4th at p. 618, fn. 2, italics added.)

Bernardino S. found it conceivable that former subdivision (b) of Penal Code section 290 "might have been construed to require registration by a juvenile offender who had been 'confined' in an 'institution' as a result of having committed one of the enumerated offenses. It is more likely, however, that subdivision (b) was intended not to expand the class of persons subject to the registration requirement, but merely to prescribe a procedure for giving notice of that requirement to persons described in subdivision (a). It might also be supposed that applicability to juvenile wards is suggested by the reference to the Youth Authority in subdivision (g)," which provided that whenever any person was released "'on parole or probation and is required to register under this section but fails to do so within the time prescribed, the Board of Prison Terms, the Youth Authority, or the court, as the case may be, shall order the parole or probation of the person revoked.'" (*In re Bernardino S., supra,* 4 Cal.App.4th at p. 618, fn. 2.) *Bernardino S.* concluded the reference in former subdivision (g) was "best explained as anticipating situations where a juvenile might be committed to the Youth Authority after trial and conviction in a criminal court." (4 Cal.App.4th at p. 618.) *Bernardino S.* further noted its conclusion was supported by the Legislature's amendment of Penal Code section 290 to expressly include wards of the juvenile court committed to the Youth Authority within the sexual offender registration statute, thus inferring the former version of the statute did not extend to juvenile offenders. (4 Cal.App.4th at pp. 618-619.) *Bernardino S.* suggests an alternative interpretation of the language in the narcotics offenders statutes of article 4 which still excludes juveniles adjudicated wards of the court who are then committed to CYA.

We therefore conclude that appellant was not within the class of offenders which may be ordered to register as a narcotics offender pursuant to sections 11590 and 11594 of article 4. The trial court's order exceeded the scope of its authority, appellant's failure to object has not waived the error, and the registration order must be stricken.

DISPOSITION

The order requiring registration as a narcotics offender, pursuant to Health and Safety Code section 11590, subdivision (a), is stricken, and the juvenile court is directed to amend its records accordingly. In all other respects the judgment is affirmed.

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Harris, J.

WE CONCUR:

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Thaxter, Acting P.J.

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Levy, J.